

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Petitioner is a state prisoner who is currently incarcerated at the Monroe Correctional Complex in Monroe, Washington. He has submitted to this Court for review a document entitled “Motion to Vacate Judgement Sentence and Conviction” in which he requests that his 2000 King County Superior Court judgment and sentence be vacated because the Washington Court of Appeals issued an unlawful mandate in connection with that case. Petitioner asserts that this Court has jurisdiction over his motion pursuant to 28 U.S.C. § 2241.

However, the Ninth Circuit has made clear that § 2254 is the exclusive avenue for a state prisoner to challenge the constitutionality of his detention when the prisoner is in custody pursuant to a state court judgment *White v. Lambert*, 370 F.3d 1002, 1007 (9th Cir. 2004). Because petitioner is seeking a determination in these proceedings that his state court judgment and sentence is unconstitutional, his petition must be construed as one brought pursuant to § 2254.

ORDER OF TRANSFER
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1 A review of this Court's records reveals that petitioner has filed at least five previous
2 federal habeas petitions challenging his 2000 King County Superior Court conviction. (See C03-
3 1327MJP, C04-473JCC, C04-477MJP, C04-745JCC, and C04-2363RSM.) The first of those
4 petitions was denied on the merits and dismissed by the Court in January 2004. (See C03-
5 1327MJP.) Three of the remaining four petitions were deemed successive and were transferred to
6 the Ninth Circuit Court of Appeals. (See C04-473JCC, C04-477MJP, and C04-2363RSM.) The
7 petition filed under cause number C04-745JCC was dismissed because petitioner failed to state any
8 specific grounds for federal habeas relief.

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10 Because the instant petition must be construed as a petition filed pursuant to § 2254, and
11 because petitioner has filed several previous petitions challenging the same conviction, including
12 one which was denied on the merits, the instant petition must be deemed successive. As petitioner
13 has previously been advised, this Court is without jurisdiction to consider a successive petition or
14 motion until the Ninth Circuit Court of Appeals has authorized its filing. 28 U.S.C. §
15 2244(b)(3)(A). Accordingly, this case is hereby TRANSFERRED to the Ninth Circuit Court of
16 Appeals, in the interests of justice, pursuant to 28 U.S.C. § 1631.

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18 The Clerk is directed to close this case and to transfer all original documents to the Ninth
19 Circuit Court of Appeals. The Clerk shall, however, retain a copy of the motion and of this Order
20 in the file. The Clerk is further directed to send a copy of this Order to petitioner and to the
21 Honorable James P. Donohue.

22 DATED this 30th day of September, 2005.

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25 Robert S. Lasnik
26 United States District Judge

1 Recommended for Entry this
2 29th day of September, 2005.

3 /s/ JAMES P. DONOHUE
4 United States Magistrate Judge

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